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In The

Supreme Court of the United States

October Term, 1997

SALVATORE C. WILLIAMS, a/k/a "Sal"; ADOLPH WILLIAMS, a/k/a "Junior"; and SALVATORE A. WILLIAMS, a/k/a "Sonny",

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether evidence illegally disclosed by state officials conducting a wire interception authorized by state law may be admitted into a prosecution in federal court consistent with Title 18 U.S.C. § 2516(2)?

2. Whether an application for electronic surveillance which asserts no more than the type of offense under investigation (gambling) is one in which a wire interception is normally productive is sufficient to meet the necessity requirement of a properly authorized order of interception under Title 18 U.S.C. § 2518(1)(c) and the parallel statute, Title 18 Pa. C.S. § 5709(3)(vii)?

LIST OF PARTIES

The complete list of petitioners in the underlying case Criminal Case Numbers: 96-3629, 96-3661, 96-3666, in the United States Court of Appeals for the Third Circuit is as follows:

Salvatore C. Williams, a/k/a "Sal", 96-3661;

Adolph Williams, a/k/a "Junior", 96-3666;

Salvatore A. Williams, a/k/a "Sonny", 96-3629.

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The petitioners Salvatore C. Williams, a/k/a Sal, Adolph Williams, a/k/a Junior, and Salvatore A. Williams, a/k/a, Sonny, respectfully pray that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit which affirmed the judgment of the District Court in upholding the admissibility of evidence derived from a wire interception ostensibly authorized under the laws of the Commonwealth of Pennsylvania.

OPINIONS BELOW

The United States District Court for the Western District of Pennsylvania, the Honorable Alan N. Bloch, upheld the admission of evidence to be tendered by the United States in a trial of these defendants and others on charges arising out of a state court authorized wire interception. The District Court did not publish an opinion regarding these issues but the portion of the transcript of the pre-trial suppression hearing in which the District Court denied these motions is attached hereto as Appendix B. United States Court of Appeals for the Third Circuit, per an opinion and order entered August 26, 1997, affirmed the determination of the District Court. Such opinion and order are attached hereto as Appendix A.

STATEMENT OF JURISDICTION

The District Court had jurisdiction over this matter pursuant to 18 U.S.C. § 3231. The United States Court of Appeals had jurisdiction pursuant to 18 U.S.C. § 3731, and this Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The text of the Fourth Amendment to the United States Constitution is appended hereto as Appendix C. The provisions of 18 U.S.C. §§ 2516(2) and 2518 are attached as Appendix D. Provisions of the Pennsylvania Wiretap Statute, 18 Pa. C.S. § 5712 are attached as Appendix E.

STATEMENT OF THE CASE

This is the second time in which an application has been made to this Honorable Court for review of a suppression issue in this matter.

The matter originally proceeded on June 26, 1991, when the District Attorney of Allegheny County, Pennsylvania obtained from the Superior Court of Pennsylvania an Order authorizing electronic surveillance of rooms located in the structure of the second floor of 1420 Fifth Avenue, Pittsburgh, Pennsylvania. The application was made pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Control Act, Title 18 Pa. C.S. § 5701, *et seq*. The ostensible purpose of this surveillance was to gather evidence of an alleged illegal gambling business.

On June 26, 1991, the Honorable Justin M. Johnson of the Superior Court of Pennsylvania entered orders authorizing the interception of oral communications at that location but refused to authorize the use of video surveillance based upon a perceived lack of statutory authorization to enter such an order. The next day, June 27, 1991, the Honorable Robert Dauer of the Court of Common Pleas of Allegheny County signed an order authorizing video surveillance on the same location, in the manner of a simple search warrant application and order. Both the order of

Judge Johnson and Judge Dauer were subsequently extended by subsequent application. The electronic surveillance at this location ended August 9, 1991.

On November 4, 1991, the county supervising district attorneys filed an application with the court for an order authorizing the postponement of an inventory and recited in that application that the Federal Bureau of Investigation, the Internal Revenue Service, and the office of the United States Attorney were participating in the investigation. Subsequently, the United States Attorney's office for the Western District of Pennsylvania presented evidence to a grand jury sitting in Pittsburgh which returned an indictment on June 6, 1995, charging all petitioners variously under the Federal Gambling Statute and for income tax violations and related offenses.

The United States has acknowledged that portions of the oral and video interceptions were both disclosed to the grand jury which indicted the petitioners and to Internal Revenue Service agents who participated in the investigation. No order authorizing that disclosure was obtained.

All petitioners filed various motions to suppress the evidence obtained from the wire interception. The District Court initially granted one aspect of these motions and suppressed wire interception. The United States Court of Appeals for the Third Circuit subsequently reversed by an order dated May 20, 1996, and this Honorable Court subsequently declined further review of the matter. The case was then remanded to the District Court where each petitioner entered a conditional plea of guilty pursuant to Rule 11(a)(2), Federal Rule of Criminal Procedure, preserving their right to appeal the denial of the other pre-trial motions to suppress evidence. That subsequent appeal was denied in an opinion and order filed by the United States Court of Appeals for the Third Circuit on August 26, 1997. *See* Appendix A. This application to this Honorable Court followed.

REASONS FOR GRANTING THE WRIT

Title 18 U.S.C. § 2516 sets forth the circumstances under which surreptitious electronic interception may be considered lawful and otherwise admissible in the courts of the United States. Sections (1) and (3) of 2516 apply to interceptions by the federal government but Section (2) applies to interceptions done at the instance of the states or political subdivisions thereof. To be lawful under the federal statute, an interception so conducted must be conducted under state procedures which are "in conformity with Section 2518 of this chapter and with the applicable state statute".

In the present case, disclosures of the state court authorized wire interceptions were made both to the federal grand jury and to agents of the Internal Revenue Service without a judge of the state court authorizing those disclosures by specific court order. Such procedure is directly in violation of the Pennsylvania Wiretap Statute as authoritatively interpreted by the Pennsylvania Supreme Court in *Commonwealth v. Hashem*, 526 Pa. 199, 584 A.2d 1378 (1991) (reversing a conviction and holding that a court must first order an application for disclosure of the contents of a wire interception in such circumstances) and *Boettger v. Miklich*, 534 Pa. 581, 633 A.2d 1146 (1993) (holding that a disclosure of gambling information obtained in a state authorized wire tap to the Internal Revenue Service was an unauthorized disclosure).

It is respectfully submitted that contrary to the view set forth in the opinion by the United States Court of Appeals for the Third Circuit, where state standards authorizing the interception or use of wire interceptions are more protective than the federal rule, they must be given effect before evidence obtained under their standards may be received in a federal proceeding. *See United States v. Geller*, 560 F. Supp. 1309, 1312

(E.D. Pa. 1983), *affirmed*, 745 F.2d 49 (3rd Cir. 1985); *United States v. Butz*, 982 F.2d 1378, 1383 (9th Cir. 1993); *United States v. Vario*, 943 F.2d 236, 244 (2nd Cir. 1991); *United States v. Brown*, 872 F.2d 385, 388-390 (11th Cir. 1989); *United States v. Marion*, 535 F.2d 697 (6th Cir. 1976). As no order was obtained to authorize the disclosure of the information as required under the law of the Commonwealth of Pennsylvania, the District Court should not have permitted the admission of such evidence and should have granted the petitioners' motion to suppress it.

This Honorable Court is respectfully implored to issue a writ to review that portion of the determination of the Court of Appeals which affirmed the finding that electronic surveillance was necessary in this case. The necessity requirement is intended to ensure that electronic surveillance is not an investigative tool of the first resort and, where normal investigative techniques are adequate to expose the alleged crime, they must be used in lieu of the highly intrusive surreptitious electronic surveillance. *United States v. Kahn*, 415 U.S. 143, 145 n.12 (1974); *Dalia v. United States*, 441 U.S. 238 (1979); *United States v. Giordano*, 416 U.S. 505 (1974).

In the present case, the Commonwealth of Pennsylvania only asserted boiler-plate reasons for seeking a wire interception in this case. Conclusions and boiler-plate language are not enough; unless specific details are provided to the Court to support the showing of necessity, the government will be in the position of asserting that electronic surveillance is necessary merely where certain types of crimes are being investigated. *United States v. Leavis*, 853 F.2d 215, 221 (4th Cir. 1988); *United States v. Simpson*, 813 F.2d 1462 (9th Cir. 1987).

Nothing in the present affidavit specifies what the police have done in terms of normal investigative procedures or other undercover attempts as methods to be used in lieu of electronic

surveillance. Specific reference is made to an undercover informant who claims to have been physically present in the subject location and observed large sums of money being brought in for the settling up of gambling debts. A simple reading of the affidavit will indicate that there is little or nothing which this informant allegedly did not know about the ongoing activities of the principles identified in the affidavit. The affidavit simply does not support the conclusion that the electronic surveillance was necessary for the purpose of obtaining information which was not already obtained or obtainable otherwise.

An enhancement of the investigation is not sufficient reason for this type of intrusive surveillance; only where finding of a genuine need is present must this be permitted.

By accepting review of this case, this Honorable Court will be able to define more precisely than ever before the necessity requirement under the electronic surveillance statutes.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED AUGUST 26, 1996

Filed August 26, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 96-3629, 96-3661, and 96-3666

UNITED STATES OF AMERICA

v.

SALVATORE A. WILLIAMS,
a/k/a "Sonny"

SALVATORE A. WILLIAMS,
Appellant No. 96-3629

UNITED STATES OF AMERICA

v.

SALVATORE C. WILLIAMS,
a/k/a "Sal"

SALVATORE C. WILLIAMS,
Appellant No. 96-3661

UNITED STATES OF AMERICA

v.

ADOLPH WILLIAMS,
a/k/a "Junior"

Adolph Williams,
Appellant No. 96-3666

Appendix A

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(Criminal Action Nos. 95-00092-4, 95-00092-1, 95-00092-2)

Argued June 16, 1997

Before: COWEN, ALITO, and SEITZ, Circuit Judges

(Opinion Filed: August 26, 1997)

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Appendix A

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OPINION OF THE COURT

ALITO, *Circuit Judge:*

Salvatore A. Williams, Salvatore C. Williams, and Adolph Williams (the "defendants") entered conditional pleas of guilty to offenses related to the operation of an illegal gambling business. On appeal, they contest the district court's denial of pretrial motions, including motions to suppress the evidence derived from electronic oral and video surveillance[1] and evidence obtained in a search of Adolph Williams's home. We affirm.

I.

The illegal gambling operation that resulted in the defendants' convictions bean in the 1960's. In initially investigating the operation, the Pennsylvania State Police utilized a confidential informant and conducted physical surveillance of an office located at 1420 Fifth Avenue, Pittsburgh (the "Fifth Avenue premises") that was believed to serve as the operation's headquarters. Concluding that these investigative techniques were insufficient, the District Attorney of Allegheny

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1. We use the phrase "electronic oral surveillance" as shorthand for the interception of wire, electronic, or oral communications within the meaning of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-20, and the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. Cons. Stat. Ann. §§ 5701-26.

County filed applications in the Superior Court of Pennsylvania under the state Wiretapping and Electronic Surveillance Control Act, 18 Pa. Cons. Stat. Ann. §§ 5701-26, seeking authorization for the state police to conduct electronic oral and video surveillance of two rooms of those premises. The applications were supported by an affidavit of two Pennsylvania State Troopers who explained some of the evidence already gathered by other means and the basis for their belief that electronic oral and video surveillance were necessary. Some of the information contained in the affidavit was provided by the confidential informant who had worked within the organization for seven years. The affidavit further stated that the state police were conducting the investigation in conjunction with the Federal Bureau of Investigation. A. 50-124.[2]

On June 26, 1991, Judge Justin M. Johnson of the Superior Court signed an order authorizing electronic oral surveillance of the Fifth Avenue premises for a period of 30 days. He denied the request for video surveillance authorization, believing that the state wiretapping statute did not empower a Superior Court judge to authorize video survellance, but he provided that his orders were "entered without prejudice to the applicant seeking further additional relief in the appropriate Court of Common Pleas."[3] A. 18(d). Accordingly, the next day, the District Attorney

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2. "A." denotes the one-volume Appendix submitted by Salvatore A. Williams.

3. Under the state wiretapping statute, an application for authorization to conduct electronic audio surveillance must be made to a judge of the Superior Court, *see* 18 Pa. Cons. Stat. Ann. § 5708. Judge Johnson apparently concluded that his authority under the state wiretapping statute did not extend to video surveillance and that an application to conduct such surveillance should therefore be made to a judge of the Court of Common Pleas, the state trial-level court.

filed an application for video surveillance in the Court of Common Pleas of Allegheny County. This application was supported by the same affidavit as the application for electronic oral surveillance previously filed in the Superior Court. Court of Common Pleas Judge Robert Dauer granted the application and authorized video surveillance of the same two rooms for a period of 30 days. After 30 days passed, the District Attorney requested and received extensions for both orders from the respective courts. All electronic oral and video surveillance of the Fifth Avenue premises ended on Friday, August 9, 1991. On Monday morning, August 12, 1991, the tapes of the surveillance were sealed.

In May 1993, the United States Attorney for the Western District of Pennsylvania applied to a federal magistrate judge for a search warrant for the residence of Adolph Williams at 274 Foxcroft Road, Pittsburgh (the "Foxcroft Road residence"). The application was supported by an affidavit executed jointly by a Special Agent of the FBI and a Pennsylvania State Trooper who were involved in the investigation. The affidavit stated that physical surveillance had revealed that anindividual associated with the operation took betting slips twice daily from a location on Fifth Avenue, Pittsburgh, to the Foxcroft Road residence. The affidavit related that in an intercepted comment Adolph Williams had said that he would take the gambling proceeds to his home for safekeeping, and the affidavit added that the confidential informant had learned that Adolph Williams had a hiding place in his residence that was used for storing records. On May 25, 1993, the magistrate judge issued the search warrant. The search was conducted on that day and resulted in the seizure of currency, gambling records, and other evidence.

The office of the United States Attorney for the Western

District of Pennsylvania presented the case to a federal grand jury, and some of the electronically intercepted evidence was disclosed to the grand jury, even though no court order specifically authorizing such disclosure had been obtained. Some of this same evidence was also disclosed to agents with the Criminal Investigation Division of the Internal Revenue Service. A. 317.

The grand jury returned a 27-count indictment, charging conspiracy and various gambling and income tax offenses. The defendants moved to suppress much of the evidence intercepted through the electronic oral and video surveillance, as well as the evidence seized from the search of the Foxcroft Road residence. The district court initially suppressed evidence derived from the oral and video surveillance on the ground that it exceeded the periods authorized by the state court judges. The government appealed, and we reversed in an unpublished opinion, holding that the district court had misinterpreted the state court orders. *United States v. Williams,* No. 95-3529 (3d Cir. May 20, 1996). On remand, the defendants all entered conditional guilty pleas that preserved for appeal the district court's denial of their other pretrial motions.

Salvatore A. Williams pleaded guilty to one count of violating 18 U.S.C. § 371 by conspiring to conduct an illegal gambling businss in contravention of 18 U.S.C. § 1955(a).

He was sentenced to one month of imprisonment and two years of probation. Salvatore C. Williams and Adolph Williams pleaded guilty to conducting an illegal gambling business, in violation of 18 U.S.C. §§ 1955 and 2, and to one count of violating 18 U.S.C. § 371 by conspiring to defraud the United States of wagering tax revenue. They were sentenced to 15-month terms of imprisonment and three-year terms of supervised

release, and they were fined $40,000 and $4,000, respectively. The defendants then took this appeal.

On appeal, the defendants contend (1) that the district court erred in refusing to suppress the video surveillance evidence because that surveillance was conducted in violation of the Fourth Amendment; (2) that the evidence seized from Adolph Williams's home should have been suppressed because the warrant was not supported by probable cause; (3) that the charges under 18 U.S.C. § 1955 should have been dismissed because those charges were based on violations of Pennsylvania gambling statutes that violate the Equal Protection Clause; (4) that the district court erred in refusing to suppress the electronically intercepted oral evidence because the Pennsylvania wiretapping statute does not comply with the certain requirements of Title III of the federal Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510- 2520 ("Title III"); (5) that the district court erred in refusing to suppress the electronically intercepted oral evidence because it was disclosed in violation of 18 Pa. Cons. Stat. Ann. §§ 5718 and 5717(a); (6) that the district court erred in refusing to suppress the electronically intercepted oral evidence because there was no necessity for the use of this investigative technique, as is required by 18 Pa. Cons. Stat. Ann. § 5709(3)(vii) and 18 U.S.C. § 2518(1)(c); (7) that the extension of the period of electronic surveillance was unjustified and that the evidence obtained as a result should have been supressed; and (8) that the district court erred in refusing to suppress the electronically intercepted oral evidence because the tapes were not timely sealed as required by Title III and the state wiretapping statute.[4]

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4. The first four arguments are raised in the joint brief submitted on behalf of Salvatore C. Williams and Adolph Williams; citations to "Jt.

(Cont'd)

II.

We turn first to the defendants' argument that the video surveillance of the Fifth Avenue premises violated the Fourth Amendment and that the evidence resulting from this surveillance should have been suppressed. The defendants do not contend that either Title III or the Pennsylvania wiretapping statute authorizes or prohibits video surveillance. Instead, they base their arguments on the understanding of the governing legal principles set out in *United States v. Torres*, 751 F.2d 875 (7th Cir. 1984). In Torres, the Seventh Circuit held, among other things, that Title III has no application to video surveillance, *id.* at 880-82; that a federal district court has the authority, either under Federal Rule of Criminal Procedure 41 or by virtue of its inherent powers, to issue a warrant for video surveillance, *id.* at 877-80; that video surveillance is a search governed by the Fourth Amendment, *id.* at 882; and that if the government conducts video surveillance in conformity with certain requirements of Title III, including the requirement of judicial certification that"normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous," 18 U.S.C. § 2518(3)(c), then the government has also conformed to the related requirements contained in the Fourth Amendment's warrant clause, 751 F.2d at 882.[5] No party in this appeal contests any of

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(Cont'd)
Br." refer to that joint brief. The final four arguments are raised in the brief filed on behalf of Salvatore A. Williams; citations to "SAW Br." refer to his brief. Each brief incorporates by reference the arguments raised in the other.

5. Other courts of appeals have taken a similar approach. *See United States v. Falls*, 34 F.3d 674, 680 (8th Cir. 1994); *United States v. Mesa-*

(Cont'd)

these principles, and therefore we will assume their validity for present purposes.

A. The defendants contend that the video surveillance in this case was "unreasonable" within the meaning of the Fourth Amendment because the nature of the crimes under investigation did not justify the use of such an intrusive investigative technique. In making this argument, the defendants rely on certain statements in *Torres*. While upholding the video surveillance in that case, which targeted "safe houses" in which it was believed that a terrorist group was assembling bombs, the *Torres* court wrote:

> The usual way in which judges interpreting the Fourth Amendment take account of the fact that searches vary in the degree to which they invade personal privacy is by requiring a higher degree of probable cause (to believe that the search will yield incriminating evidence), and by being more insistent that a warrant be obtained if at all feasible, the more intrusive the search is. *But maybe in dealing with so intrusive a technique as television surveillance, other methods of control as well, such as banning the technique outright from use in the home in connection with minor crimes, will be required, in order to strike a proper balance between public safety and personal privacy.* That question is not before us, but we mention it to make

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(Cont'd)

Rincon, 911 F.2d 1433, 1437 (10th Cir. 1990); *see also United States v. Koyomejian*, 970 F.2d 536, 542 (9th Cir.), *cert. denied*, 506 U.S. 1005 (1992); *United States v. Cuevas-Sanchez*, 821 F.2d 248, 252 (5th Cir. 1987); *United States v. Biasucci*, 786 F.2d 504, 510 (2d Cir.), *cert. denied*, 479 U.S. 827 (1986).

> clear that in declining to hold television surveillance unconstitutional per se we do not suggest that the Constitution must be interpreted to allow it to be used as generally as less intrusive techniques can be used.

751 F.2d at 882-83 (emphasis added) (citations omitted).

Relying on these remarks, the defendants maintain that their offenses were not sufficiently serious to justify video surveillance. However, the video surveillance in this case was not conducted in a "home," and the order authorizing the video surveillance was based on a finding that the defendants had committed, were committing, and would continue to commit first-degree felonies, which are punishable by imprisonment for up to 20 years.[6] Thus, even the equivocal and limited *Torres* dicta does not support reversal.

We note that every court of appeals that has addressed video surveillance has held that video surveillance conforming to the standards set out in Title III is constitutional, and we have found no case that suggests that the application of these standards depends upon the nature of the crime or crimes under investigation. Title III standards were applied in every case, covering a range of crimes from counterfeiting to drug distribution to loansharking. *E.g., Falls,* 34 F.3d 674 (conspiracy to distribute cocaine, distribution of cocaine, and related

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6. The video surveillance authorization order referred to violations of 18 Pa. Cons. Stat. Ann. § 911 (which pertains to"corrupt organizations" and is a first-degree felony) and a conspiracy to commit that offense (and others), 18 Pa. Cons. Stat. Ann. § 903, which is also a first-degree felony. *See* 18 Pa. Cons. Stat. Ann. § 905(a). Afirst-degree felony is punishable by imprisonment for not more than 20 years. 18 Pa. Cons. Stat. Ann. § 1103(1). The order also referred to one misdemeanor, a violation of 18 Pa. Cons. Stat. Ann. § 5512, which concerns illegal lotteries.

charges); *Koyomejian*, 970 F.2d 536 (money laundering); *Mesa-Rincon*, 911 F.2d 1433 (counterfeiting); *Cuevas-Sanchez*, 821 F.2d 248 (possession of marijuana with intent to distribute); *Biasucci*, 786 F.2d 504 (loansharking). For these reasons alone, we reject the defendants' argument here.

Moreover, we are skeptical of the defendants' general suggestion that a judicial officer, in decidig whether to issue a search warrant or in reviewing the issuance of a search warrant, should take into account his or her own evaluation of the seriousness of the felony or felonies under investigation. Other than the *Torres* dicta, the defendants cite no authority that provides any support for this proposition. In considering the reasonableness of a search or seizure, it is sometimes appropriate for a court to balance "the public interest and the individuals's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975); *see also Maryland v. Wilson*, 117 S. Ct. 882, 885 (1997). But it does not follow that a judicial officer, in weighing the public interest, may properly take into account his or her personal opinion regarding the need for or the importance of the criminal provisions that appear to have been violated. Like other citizens, judicial officers differ in their views regarding the seriousness of certain criminal offenses. If judicial officers were permitted to take their personal opinions on these matters into account in deciding whether a particular search was reasonable, the meaning of reasonableness under the Fourth Amendment would vary significantly depending on the particular judicial officer before whom the question was presented.

The defendants here characterize their gambling offenses as relatively benign, and there are undoubtedly those who would agree with this characterization. But that view of illgal gambling

is not universal. In enacting Title III, Congress thought that gambling offenses were sufficiently serious to include them among the crimes in the investigation of which it is permissible to employ wiretapping and bugging, investigative techniques that result in a serious invasion of personal privacy. *See* 18 U.S.C. § 2516(1)(c) (permitting federal wiretapping or bugging to investigate illegal transmission of wagering information and operation of gambling enterprises); and *id.* § 2516(2) (permitting state wiretapping and bugging to investigate gambling offenses). Congress also has made it a felony, punishable by up to five years' imprisonment, to conduct, finance, manage, supervise, direct, or own all or part of an illegal gambling business. 18 U.S.C. § 1955. And Congress has designated violations of this provision as predicate offenses under the money laundering statute, *id.* § 1956, and the RICO statute, *id.* § 1961, which carry even more substantial penalties. In treating gambling offenses in this way, Congress has plainly concluded that certain gambling offenses are serious crimes,[7] and it is not for us to review the correctness of this evaluation.

In sum, we reject the defendants' argument that the video surveillance in this case violated their Fourth Amendment rights on the groud that the offenses under investigation were insufficiently serious to justify the use of this intrusive investigative tool.

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7. In reaching this conclusion, Congress was undoubtedly influenced by its recognition that gambling has historically provided a major source of revenue for organized crime groups. *See* President's Commission on Organized Crime, *The Impact:* Organized Crime Today 12-13 (1986); President's Commission on Law Enforcement Administration of Justice, *The Challenge of Crime in a Free Society* 188 (1967); *cf.* The National Gambling Impact Study Commission Act, Pub. L. 104-169, 110 Stat. 1482 (1996) (establishing federal commission to conduct a comprehensive study of the social and economic impacts of gambling in the United States).

B. The defendants next assert that the video surveillance of the Fifth Avenue premises failed to meet Title III's requirement that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are too dangerous." *See* 18 U.S.C. § 2518(3)(c). Specifically, the defendants argue that the application was defective because it did not state why electronic oral interception could not have been used before resorting to video surveillance. As a result, they argue that the video surveillance violated the Fourth Amendment as well.

In Title III cases, courts have consistently held that 18 U.S.C. § 2518(3)(c) does not require the government to exhaust all other investigative procedures before resorting to electronic surveillance. *See United States v. Barnes*, 47 F.3d 963, 965 (8th Cir. 1995); *Falls*, 34 F.3d at 682; *Mesa-Rincon*, 911 F.2d at 1443; *United States v. Apodaca*, 820 F.2d 348, 350 (10th Cir.), *cert. denied*, 484 U.S. 903 (1987); *United States v. Webster*, 734 F.2d 1048, 1055 (5th Cir.), *cert. denied sub nom., Hoskins v. United States*, 469 U.S. 1073 (1984). Rather, it is sufficient if there is evidence that "normal investigative techniques . . . reasonably appear to be unlikely to succeed if tried." 18 U.S.C. § 2518(3)(c). "The government need only lay a 'factual predicate' sufficient to inform the judge why other methods of investigation are not sufficient." *United States v. McGlory*, 968 F.2d 309, 345 (3d Cir.) (*quoting United States v. Armocida*, 515 F.2d 29, 38 (3d Cir.), *cert. denied sub nom., Conti v. United States*, 423 U.S. 858 (1975)); *cert. denied sub nom., Hauser v. United States*, 506 U.S. 956 (1992). Furthermore, in determining whether this requirement has been satisfied, a court "may properly take into account affirmations which are founded in part upon the experience of specially trained agents." *United States v. Ashley*, 876 F.2d 1069, 1072 (1st Cir. 1989); *see also United States v.*

Landmesser, 553 F.2d 17, 20 (6th Cir.), *cert. denied,* 434 U.S. 855 (1977). "The government's showing is to be 'tested in a practical and commonsense fashion.' " *McGlory,* 968 F.2d at 345 (quoting *United States v. Vento,* 533 F.2d 838, 849 (3d Cir. 1976)).[8]

Since the defendants contend that the Fourth Amendment should be held to require compliance with 18 U.S.C. § 2518(3)(c) in video surveillance cases, we see no reason why the rules developed in cases in which that provision is directly applicable should not be applied here as well, and it appears that other courts of appeals in video surveillance cases have taken on this approach. Our review of those cases shows that the inadequacy of other investigative techniques has been proven by demonstrating such factors as the inability of a confidential informant to gather additional information, the futility of electronic oral surveillance where the crime was being committed in silence, the use of evasive tactics by the investigation's targets, and the difficulty of penetrating an organization with a secretive nature and a propensity towards violence.

For example, in *Falls,* the affidavit stated that a government informant who had been successful in getting information in the past would no longer be helpful because she was not privy to the drug distribution group's sources, the extent of the operation, or its method of distributing the proceeds. 34 F.3d at 677. The affidavit further stated that her access to the group's meeting place was limited by safety concerns. *Id.* The affidavit named and discussed a total of seven investigative techniques that had been tried or appeared too dangerous or unlikely to

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8. Our standard of appellate review is plenary. *United States v. McGlory,* 968 F.2d at 345.

succeed in light of the drug conspiracy's secretive nature and propensity towards violence. *Id.* at 683. These affirmations were held to be sufficient to demonstrate the inadequacy of other investigative techniques. *Id.*

In *Mesa-Rincon,* the government submitted an affidavit asserting that audio surveillance was not feasible because the crime, counterfeiting, could be committed without oral communication and because the noise of the printing presses drowned out any conversation. 911 F.2d at 1444. The affidavit also stated that interrogation and infiltration of the operation were not viable alternatives, because either technique would have aroused suspicion and prevented the successful completion of the investigation. *Id.* In addition, the affidavit asserted that a traditional search would likewise have been unfruitful, because it was "quite likely that the key evidence of actual counterfeit bills might not be found." *Id.* at 1445. Under these circumstances, the court held that the government had satisfactorily demonstrated that other investigative techniques were inadequate. *See also Biasucci,* 786 F.2d at 511 (affidavit sufficient because it showed that some confidential sources refused to testify, the undercover agent was not permitted to be present at alleged loansharking transaction and at meetings at the defendants' business premises, interviews with victims were not feasible, search warrants and grand juries were not expected to produce significant evidence, and prior victims would be unlikely to testify for fear of reprisals); *Torres,* 751 F.2d at 877 (affidavit sufficient because it showed that FBI had reason to believe that the people involved in the bomb construction operation, fearing that they might be bugged, played the radio loudly when they were speaking to one another, spoke in code, and built the bombs in silence).

In the instant case, the affidavit stated that execution of a

search warrant was unlikely to succeed because it would reveal the facts of the investigation to the targets. A. 55. The affidavit noted that the probable cause affidavit would have to be attached to the warrant when it was executed and that this would cause the targets to take defensive measures, which would impede the progress of the investigation. A. 55. The affidavit also stated that since organizations such as the one involved in this case are highly suspicious of unfamiliar persons, the use of another confidential informant would not have been fruitful. A. 56. The affidavit stated that the confidential informant who had been used previously, as well as physical surveillance and the gathering of law enforcement intelligence information, had been utilized to the fullest extent possible and that any further use of such techniques might result in discovery. A. 59. The affidavit noted that the organization transacted its business in private and via cellular phones, making it difficult to investigate the organization and learn the identities of upper echelon figures. A. 57-60. The affidavit noted that the informant had said that some type of electronic detection equipment might have been installed to alert the targets to surveillance attempts. A. 58. Finally, the affidavit stated:

> Video surveillance is being requested in order to further assist in identifying those subjects involved in this alleged criminal activity. As enumerated within this affidavit, there have been occasions where numerous persons have been observed within the building at one time. Video surveillance will enable investigators to identify those subjects intercepted, rather than attempting identification through less exact means such as voice exemplars. In addition, video surveillance will disclose any non-verbal criminal activity, such as any actual "settle up" of monies between those subjects monitored in this investigation.

A. 62. We believe that the affidavit provided a sufficient "factual predicate" for a finding that "normal investigative techniques" (*i.e.*, techniques other than video surveillance) were unlikely to ucceed. We also conclude that the affidavit, read in a "practical and commonsense fashion," sufficiently showed the need for video surveillance. There was probable cause to believe that what was occurring at the premises was the actual operation of an illegal gambling business, not simply conversations about or in furtherance of that business. Thus, as was the case in *Mesa-Rincon*, audio surveillance alone was not likely to disclose the identities of all of the participants and what they were doing. While it would not be advisable to use the application as a model in future video surveillance cases, we hold that it satisfies constitutional requirements under the circumstances here. We therefore affirm the district court's denial of defendants' suppression motion on this ground.

III.

The defendants argue that the search of the Foxcroft Road residence belonging to Adolph Williams violated the Fourth Amendment because the information used to establish probable cause was stale and remote. The defendants contend that very little of the information contained in the supporting affidavit demonstrated a nexus between the gambling operation and the Foxcroft Road residence, and they argue that any information suggesting such a connection was obtained from a confidential informant who ceased working for the principals in the mid-1980's. Thus, the defendants contend, the information was stale.

Probable cause is determined by a "totality-of-the-circumstances analysis," under which a magistrate judge must "make a practical, commonsense decision whether, given all the

circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). In reviewing such a determination, our role is quite limited. We must simply decide whether the magistrate judge had a substantial basis for concluding that probable cause existed. *United States v. Conley*, 4 F.3d 1200,1205 (3d Cir. 1993), *cert. denied*, 510 U.S. 1177 (1994). Therefore, "a reviewing court is to uphold the warrant as long as there is a substantial basis for a fair probability that evidence will be found." *Id.* (footnote omitted).

The supporting affidavit to a search warrant application must be read in its entirety and in a common sense and nontechnical manner. *Id.* at 1206. The affidavit need not contain direct evidence that proof of wrongdoing would be present at the premises. *Id.* at 1207. "Instead, probable cause can be, and often is, inferred by 'considering the type of crime, the nature of the items sought, the suspect's opportunity for concealment and normal inferences about where a criminal might hide [the] property.' " *Id.* (quoting *United States v. Jones*, 994 F.2d 1051, 1056 (3d Cir. 1993)). The focus should be on what the affidavit includes, rather than on what it does not include. *Id.* at 1208.

The age of the information supporting a warrant application is a factor that must be considered in determining probable cause. *United States v. Harvey*, 2 F.3d 1318, 1322 (3d Cir. 1993). If information is too old, it may have little value in showing that contraband or evidence is still likely to be found in the place for which the warrant is sought. *Id.* Age alone, however, does not determine staleness. "The likelihood that the evidence sought is still at the place to be searched depends on a number of variables, such as the nature of the crime, of the criminal, of the

thing to be seized, and of the place to be searched." *United States v. Tehfe*, 722 F.2d 1114, 1119 (3d Cir. 1983), *cert. denied sub nom., Sanchez v. United States*, 466 U.S. 904 (1984). "[W]hen an activity is of a protracted and continuous nature, 'the passage of time becomes less significant.' " *Id.* (quoting *United States v. Harris*, 482 F.2d 1115, 1119 (3d Cir. 1973)). Thus, when the criminal activity has been going on continuously for years, staleness is of less concern. *Id.* at 1120 (staleness did not negate probble cause in drug trafficking conspiracy that had been going on for several years).

In this case, the gambling operation began in the 1960's and continued through the 1990's. In light of its long and continuous operation, staleness is less important in the probable cause analysis. *See Tehfe*, 722 F.2d at 1120. The affidavit submitted in support of the warrant application contained information, obtained from the confidential informant and from physical surveillance, that suggested that gambling evidence would be found at the Foxcroft Road residence. The affidavit also related various electronically intercepted statements made at the Fifth Avenue premises that indicated that evidence would likely be found at the Foxcroft Road residence.

The confidential informant, who had worked with the defendants for several years until the mid-1980's, reported that he knew of secret hiding places in the residence. Jt. App. 499.[9] He also reported that Adolph Williams had once told him about a hidden room in the basement of the house that was used to conceal records. Jt. App. 499. The informant stated that he knew through conversations with other individuals involved in gambling that Adolph Williams was still running the operation.

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9. "Jt. App." refers to the appendix submitted on behalf of Salvatore C. Williams and Adolph Williams.

Jt. App. 499. Electronic surveillance conducted in July 1991 revealed that Salvatore C. Williams expressed concern about leaving money at the Fifth Avenue premises, and Adolph Williams stated that he would take the money home with him. Jt. App. 494. Physical surveillance conducted between December 1992 and April 1993 revealed that an individual took a pouch believed to contain numbers slips on a twice-daily basis from a gym located on Fifth Avenue to another location and then to the Foxcroft Road residence, where he would stay for up to one hour. Jt. App. 501-05. Thus, the surveillance, which ended in April 1993, indicated that the suspected criminal activity continued until at least a few weeks before the search was conducted on May 25, 1993. The fact that evidence of the suspected criminal activity continued up through the last weeks before the search strongly suggests that the information in the affidavit was not stale.

In light of the protracted nature of this criminal enterprise, we conclude that the magistrate judge had a substantial basis for concluding that there was probable cause to believe that records, numbers slips, or large amounts of money would be found at the Foxcroft Road residence. As the government points out, "[t]he primary evidence sought was records, which are generally created for the very purpose of preservation." Govt. Br. at 45. The informant's information regarding a secret room in the basement also provided support for a probable cause finding, since it is likely that the use of such a permanent and specialized feature would continue for a lengthy period. Furthermore, the daily movement of an individual with a bag from a Fifth Avenue location to the Foxcroft Road residence strongly suggested that the contents of that bag, believed to be gambling receipts, might be found at the residence. For these reasons, we see no basis for overturning the magistrate judge's probable cause determination.

Moreover, even if we held that probable cause was lacking, suppression of the evidence obtained pursuant to the warrant would not be justified under *United States v. Leon,* 468 U.S. 897 (1984). Although the defendants maintain that the affidavit in this case was "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable," *id.* at 923 (citation omitted), that argument is patently wrong. We therefore affirm the district court's denial of defendants' motion to suppress the evidence obtained as a result of the search of the Foxcroft Road residence.

IV.

The defendants argue that the district court should hve dismissed counts one and two of the indictment on equal protection grounds. These counts charged that the defendants conspired to and did in fact violate 18 U.S.C. § 1955 by conducting a gambling business in violation of a Pennsylvania statute, 18 Pa. Cons. Stat. Ann. § 5514, that prohibits "pool selling," "bookmaking," and related activities. The defendants contend that this Pennsylvania statute violates the Equal Protection Clause because it prohibits some forms of gambling while other state laws authorize other forms of gambling such as the state lottery. Taken together, the defendants maintain, these laws create a disparity of treatment between "entities which engage in state-authorized gambling" and "entities which engage in gambling not authorized by the state." Jt. Br. at 36. The defendants contend that 18 Pa. Cons. Stat. Ann. § 5514 is subject to strict scrutiny because it "impinges upon the exercise of certain fundamental rights," namely,"the right to hold specific private employment," "the right to enter contracts," and "the right of association for economic and social reasons." *Id.* at 36. The defendants argue that the only interest ever served by 18

Pa. Cons. Stat. Ann. § 5514 was "preventing the inflammation of the gambling instinct," that the Commonwealth no longer views this as an important interest and indeed now has an interest in "encouraging the gambling instinct" (*id.* at 29), and that therefore 18 Pa. Cons. Stat. Ann. § 5514 cannot survive any degree of equal protection scrutiny.

Before addressing the merits of defendants' equal protection argument, we must determine the standard that governs our analysis. "[A]s a general matter, economic and social legislation is subject to rational basis review, under which a law need only be rationally related to a legitimate state interest." *Tolchin v. Supreme Court of New Jersey,* 111 F.3d 1099, 1113 (3d Cir. 1997) (internal quotations omitted). However, suspect classifications, such as those based on race, national origin, or alienage, and "classifications affecting fundamental rights are given the most exacting scrutiny." *Clark v. Jeter,* 486 U.S. 456, 461 (1988) (citation omitted). Such laws must be "suitably tailored to serve a compelling state interest." *City of Cleburne v. Cleburne Living Ctr.,* 473 U.S. 432, 440 (1985); *see also Artway v. Attorney General of New Jersey,* 81 F.3d 1235, 1267 (3d Cir. 1996).

For equal protection purposes, "fundamental rights" include such constitutional rights as the right of interstate travel, *Shapiro v. Thompson,* 394 U.S. 618 (1969), the right to vote, *Bullock v. Carter,* 405 U.S. 134 (1972), rights guaranteed by the First Amendment, *Williams v. Rhodes,* 393 U.S. 23 (1968), and the right to procreate, *Skinner v. Oklahoma,* 316 U.S. 535 (1942). *See Massachusetts Bd. of Retirement v. Murgia,* 427 U.S. 307, 312 n.3 (1976) (per curiam). However, the rights asserted by the defendants here do not qualify for strict scrutiny.

As noted, the defendants claim that 18 Pa. Cons. Stat. Ann.

§ 5514 affects their "right to hold specific private employment." However, it is settled that laws restricting access to specific types of private employment are subject to only rational basis review. *See, e.g., Leis v. Flynt*, 439 U.S. 438, 444 n.5 (1979) (practice law); *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957) (same); *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955) (fitting or duplicating eyeglass lenses); *Kotch v. Board of River Port Pilot Comm'rs*, 330 U.S. 552 (1947) (pilotage of vessels); *see also Edelstein v. Wilentz*, 812 F.2d 128, 132 (3d Cir. 1987) ("The Constitution does not create fundamental interests in particular types of employment."). Thus, we cannot subject 18 Pa. Cons. Stat. Ann. § 5514 to strict scrutiny on this basis.

Nor is strict scrutiny justified on the ground that this provision affects the defendants' right to enter into contracts (whether wagering contracts or other contracts related to the operation of a gambling business) or on the ground that it affects thir "right of association for economic and social reasons." Jt. Br. at 29. All laws restricting access to particular types of private employment have these effects. For example, in *Williamson*, a state statute permitted only licensed optometrists and opthamologists to fit or duplicate eyeglass lenses. Not only did this law affect the ability of persons not within the favored groups to obtain this particular type of private employment, but it also affected their ability to enter into a variety of contracts, such as contracts of employment to fit or duplicate lenses and contracts with customers for the fitting or duplication of lenses. Likewise, the law challenged in *Williamson* affected the ability of persons not in the favored groups to associate with others for the purpose of fitting or duplicating lenses. Yet the Supreme Court subjected the law at issue in *Williamson* to only rational basis review. *See* 348 U.S. at 489. We are therefore persuaded that this same standard of review applies here.

Under this standard, "a law need only be rationally related to a legitimate state interest," *Tolchin*, 111 F.3d at 1113 (internal quotation omitted), and 18 Pa. Cons. Stat. Ann. § 5514 easily satisfies this requirement. In prohibiting certain gambling activities but not others, Pennsylvania lawmakers could have rationally concluded that the prohibited activities are particularly undesirable — because they have an increased tendency to encourage self-destructive behavior, because they are especially susceptible to the dishonest practices and organized crime connections that have historically plagued the gambling business, or for other reasons. As the Court wrote in *Williamson:*

> Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others.

348 U.S. at 489 (citations omitted); *see also Commonwealth v. Hainsey*, 550 A.2d 207, 209 (Pa. Super. Ct. 1988) (rejecting argument that enforcement of 18 Pa. Con. Stat. Ann. § 5514, prohibiting pool selling and bookmaking, is unjust because the Commonwealth promotes the state lottery and condones wagering at rack tracks; § 5514 was "enacted as a legitimate exercise of legislative authority."). We conclude that § 5514 is rationally related to a legitimate state interest, and we therefore reject the defendants' equal protection challenge.

V.

The defendants next argue that the oral evidence

electronically intercepted from the Fifth Avenue premises should have been suppressed because the Pennsylvania statute under which the authorization was obtained does not comply with 18 U.S.C. § 2518. The defendants contend that the state statute is deficient in that it permits a law enforcement officer to swear out the supporting affidavit used to establish that there is probable cause for the interception and that other investigative procedures are inadequate. The defendants maintain that the federal statute requires "the attorney for the government" to make such assertions. SAW Br. at 12. This distinction is critical, the defendants contend, because approval and oversight by government attorneys provides an 'administrative check' to avoid arbitrary invasions of privacy rights by government officials." *Id.* at 13.

The defendants' argument is based on a misreading of the relevant provisions of Title III. When an order permitting electronic interception of wire or oral communications is sought in federal court, the application must be authorized by certain high-ranking Justice Department officials, 18 U.S.C. § 2516(1), but the application need not be made by a government attorney. Section 2518(1) provides in pertinent part:

> *Each application* for an order authorizing or approvin the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application *shall include the following information:*
>
> (a) *the identity of the investigative or law enforcement officer making the application,* and the officer authorizing the application;

> (b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) . . . a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;
>
> (c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous . . .

18 U.S.C. § 2518 (emphasis added).

As is evident from the highlighted language, § 2518 does not require that an application be made by an attorney; instead, such an application may be made by an "investigative or law enforcement officer." Nor does § 2518 require a statement by a government attorney regarding the attorney's belief that an interception order should be issued; instead, the statute requires a statement regarding the applicant's belief that such an order should be issued, as well as "a full and complete statement" (by someone, presumably including the applicant) as to the inaequacy of other investigative techniques. Thus, there is no textual requirement that an attorney for the government make these statements, as the defendants contend.

The defendants cite no case law supporting the proposition

that a law enforcement officer's affidavit is insufficient in a case in which federal court approval for wiretapping or bugging is sought, and we have found no such case. To the contrary, affidavits sworn out by law enforcement officers have been held to be sufficient. *See, e.g., United States v. Kahn*, 415 U.S. 143, 144 n.1 (1974) (affidavit of FBI special agent); *United States v. Falls*, 34 F.3d 674, 676 (8th Cir. 1994) (affidavit of FBI special agent); *United States v. Ashley*, 876 F.2d 1069, 1071 (1st Cir. 1989) (affidavit of DEA special agent).

The Pennsylvania statute pursuant to which the application in this case was made provides:

> Each application for an order of authorization to intercept a wire or oral communication shall be made in writing upon the personal oath or affirmation of the Attorney General or a district attorney of the county wherein the interception is to be made and shall contain all of the following:
>
> (1) A statement of the authority of the applicant to make such application.
>
> (2) A statement of the identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to intercept a wire or oral communication is sought.
>
> (3) A sworn statement by the investigative or law enforcement officer who has knowledge of relevant information justifying the application, which shall include:

(i) The identity of the particular person, if known, committing the offense and whose communications are to be intercepted.

(ii) The details as to the particular offense that has been, is being, or is about to be committed.

. . .

(iv) A showing that tere is probable cause to believe that such communication will be committed on the wire communication facility involved or at the particular place where the oral communication is to be intercepted.

. . .

(vii) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or are too dangerous to employ.

18 Pa. Cons. Stat. Ann. § 5709 (emphasis added). Thus, under the Pennsylvania scheme, the application must be made by the Attorney General or a district attorney and must be supported by an affidavit of a law enforcement officer.

As we have noted, when a federal court order is sought, 18 U.S.C. § 2518(1) does not require that a government attorney execute the affidavit used to establish probable cause and the inadequacy of other investigative techniques, and we are not persuaded that Title III demands anything more when an application is made to a state court. Under 18 U.S.C. § 2516(2),

such an application must be made by a state's "principal prosecuting attorney" or by "the principal prosecuting attorney of any political subdivision thereof," and the judge may grant the application"in conformity with" § 2518. We do not interpret this provision to require that an attorney make the statement supporting probable cause or the inadequacy of other investigative techniques. *See United States v. Smith*, 31 F.3d 1294, 1298 (4th Cir. 1994) (affidavit of police officer), *cert. denied*, 115 S. Ct. 1170 (1995); *United States v. Homick*, 964 F.2d 899, 903 (9th Cir. 1990) (affidavit of detective); *United States v. Young*, 822 F.2d 1234, 1237 (2d Cir. 1987) (affidavit of state police detective).

Furthermore, it is apparent that when the Attorney General of Pennsylvania or a district attorney submits an application to a state court and relies on an affidavit of a law enforcement officer the Attorney General or district attorney, as an officer of the court, is implicitly representing that it is his or her belief that there is probable cause for the surveillance and that other investigative techniques are inadequate. To be sure, the Attorney General or district attorney makes that implicit representation in reliance on the law enforcement officer's affidavit, but the same type of reliance would almost certainly occur even if the Attorney General or district attorney were to execute the affidavit. Statements made by an affiant submitted in support of a warrant may be based on information provided by others, *see Illinois v. Gates*, 462 U.S. at 238, and it is unrealistic to expect that a state attorney general or district attorney will routinely acquire sufficient firsthand information about the grounds for a warrant application so as to be able to base his or her affidavit on anything other than information relayed by field investigators and their supervisors. Thus, we do not agree with the defendants that the Pennsylvania scheme eliminates an important "administrative check."

Appendix A

VI.

The defendants contend that electronically intercepted evidence from the Fifth Avenue premises was disclosed to a federal grand jury in violation of provisions of the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. Cons. Stat. Ann. §§ 5717(a) and 5718, and that therefore this evidence should have been suppressed.[10] As we understand the defendants' argument, it runs as follows. The order signed by the Superior Court judge authorized the interception of conversations relating to certain state offenses, *viz.*, "offenses involving Corrupt Organizations, 18 Pa. C.S. § 911; Lotteries, 18 Pa. C.S. § 5512; and/or Conspiracy to commit the aforesaid violations in violation of 18 Pa. C.S[.] S 903." Jt. App. 80. Under 18 Pa. Cons. Stat. Ann. § 5718, when an authorized interception of wire or oral communications intercepts "communications relating to offenses other thanthose specified in the order of authorization," these communications and evidence derived from them may be disclosed before a federal grand jury only if an

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10. The defendants also contend that evidence was improperly disclosed to agents of the Internal Revenue Service's Criminal Investigation Division, but the defendants do not explain the basis for this argument. Under 18 U.S.C. § 2517(1), the Pennsylvania State Troopers authorized by court order to intercept oral communications were permitted to disclose the contents "to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure." *See United States v. Iannelli*, 477 F.2d 999, 1001 (3d Cir. 1973) ("These Internal Revenue Service agents are investigative or law enforcement officers within the meaning of 18 U.S.C. § 2510(7) and disclosure was appropriate to the performance of their duties."), *aff'd*, 420 U.S. 770 (1975). Therefore, based on the brief treatment given to the issue of disclosure of evidence to IRS agents in the defendants' briefs, we see no ground for holding that this disclosure was improper.

application to a court is made and the court makes certain findings "in advance of such disclosure." Here, the government acknowledged that portions of the intercepted communications were presented to a federal grand jury without a prior authorization order. *See* Govt. Br. at 18-19. Based on these facts, the defendants argue that this disclosure violated 18 Pa. Cons. Stat. Ann. § 5718, that suppression was required under *Commonwealth v. Hashem*, 584 A.2d 1378 (Pa. 1991), and that this state rule of suppression is applicable in this federal case because "a Title III type interception conducted under State law and proposed to be used in a federal court must meet any state standards which are 'more demanding than federal one' in the district in which the offer is made." SAW Br. at 14-15 (quoting *United States v. Geller*, 560 F. Supp. 1309, 1312 (E.D. Pa. 1983), *aff'd*, 745 F.2d 49 (3d Cir. 1985) (table)).

It appears that the defendants are arguing that Title III requires suppression when communications are intercepted pursuant to a state statute and are subsequently disclosed in violation of state law. However, it is also possible that the defendants are arguing that the suppression remedy provided by state law is directly applicable under these circumstances in a federal case. We will therefore address both arguments.

A. In considering the question of suppression under federal law, two statutory provisions must be taken into account. The first, 18 U.S.C. § 2515, states:

> Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury,

> department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof *if the disclosure of that information would be in violation of this chapter.*

Id. (emphasis added). The second, 18 U.S.C. § 2518 (10)(a) provides, in pertinent part, as follows:

> Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that —
>
> (i) the communication was unlawfully intercepted;
>
> (ii) the order of authorization or approval under which it was intercepted is insufficient on is face; or
>
> (iii) the interception was not made in conformity with the order of authorization or approval.

The Supreme Court has explained the relationship between these two provisions. In *United States v. Giordano*, 416 U.S. 505, 524 (1974), the Court wrote that "[w]hat disclosures are forbidden [under § 2515], and are subject to motions to suppress, is . . . governed by § 2518(10)(a)." Thus, evidence may be suppressed only if one of the grounds set out in § 2518(10)(a) is met. Moreover, " '[not] every failure to comply fully with any requirement provided in Title III would render the interception

of wire or oral communications "unlawful" ' " under § 2518(10)(a)(i). *United States v. Donovan*, 429 U.S. 413, 433 (1977) (quoting *United States v. Chavez*, 416 U.S. 562, 574-75 (1974)). Rather, suppression is mandated "only for a 'failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device.' " *Donovan*, 429 U.S. at 433-34 (quoting *Giordano*, 416 U.S. at 527).

Construing these statutory provisions, our court held more than 20 years ago that Title III does not prescribe suppression as a remedy for a disclosure violation. *United States v. Iannelli*, 477 F.2d 999, 1001 (3d Cir. 1973), aff 'd, 420 U.S. 770 (1975). We wrote that "the suppression remedy specified in 18 U.S.C. § 2518(10) applies to unlawful interceptions. A civil remedy applies to unlawful disclosures. 18 U.S.C. § 2520." *Id.; see also United States v. Vento*, 533 F.2d 838, 855 (3d Cir. 1976). Other courts of appeals have reached the same conclusion. *See, e.g., United States v. Barnes*, 47 F.3d 963, 965 (8th Cir. 1995); *Resha v. United States*, 767 F.2d 285, 288 (6th Cir. 1985) ("we construe § 2518 to permit suppression of evidence only if that evidence was derived from unlawful, improper or unauthorized *interceptons* of wire or oral communications. It does not authorize suppression for disclosures of such information, even if they violate § 2517.") (emphasis in original), *cert. denied*, 475 U.S. 1081 (1986).[11]

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11. We are not persuaded by the defendants' reliance on *United States v. Marion*, 535 F.2d 697, 703-04 (2d Cir. 1976), and *United States v. Brodson*, 528 F.2d 214 (7th Cir. 1975). Insofar as these cases suppressed evidence based on violations of the nondisclosure restrictions in 18 U.S.C. § 2517(5), these decisions are contrary to controlling precedents of our court.

Iannelli and *Vento* are binding on us here, and in any event we see no basis for questioning their reasoning. The section of Title III governing suppression, 18 U.S.C. § 2518(10), sets out three grounds for suppression, and none of these grounds applies to evidence that is intercepted lawfully but that is later disclosed improperly. For improper disclosure, Title III instead authorizes a civil remedy. *See* 18 U.S.C. § 2520(a).[12]

If the defendants based their argument on an alleged violation of federal nondisclosure requirements, the authorities cited above would be directly controlling, but the defendants have attempted to weave their way around these obstacles by contending that suppression is required because a *state* nondisclosure provision was violated and because the Pennsylvania Supreme Court held in *Hashem* that evidence disclosed in violation of that provision must be suppressed. The defendants point out that under 18 U.S.C. § 2516(2), an authorization order signed by a state judge must be "in conformity with [18 U.S.C. §] 2518 . . . and with the applicable State statute," and the defendants rely on cases holding that suppression is required in federal court when state officers intercept communications in violation of the applicable state

12. This provision provides, in pertinent part, as follows:

> Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

18 U.S.C. § 220(a) (emphasis added). The exception set out in 18 U.S.C. § 2511(2)(a)(ii) applies to "providers of wire or electronic communication service" and certain persons associated with them. It thus has no application here.

statute. *See United States v. Butz*, 982 F.2d 1378, 1383 (9th Cir.), *cert. denied*, 510 U.S. 891 (1993); *United States v. Vario*, 943 F.2d 236, 244 (2d Cir. 1991), *cert. denied*, 502 U.S. 1036 (1992); *United States v. Bascaro*, 742 F.2d 1335 (11th Cir. 1984), *cert. denied sub nom., Hobson v. United States*, 472 U.S. 1017 (1985); *United States v. Brown*, 872 F.2d 385, 388-90 (11th Cir.), *cert. denied*, 493 U.S. 898 (1989).

We are not persuaded by the defendants' attempts to circumvent *Iannelli* and *Vento*. We understand these precedents to rest on the proposition that 18 U.S.C. § 2518(10)(a) sets out the exclusive grounds for suppression under Title III but omits any reference to disclosure violations. Since this provision makes no mention of *federal or state* disclosure violations, we see no basis for holding that this provision authorizes suppression for state, but not federal, disclosure violations.

Whether the Pennsylvania courts would have ordered suppression under Hashem makes no difference. We will discuss below the question whether the Pennsylvania suppression rule is directly applicable in this federal case. At present, we are addressing the question whether *federal* law requires suppression, and the defendants have not called to our attention any provision of Title III that requires or authorizes the suppression of evidence in federal court simply because a state court would have ordered suppression as a remedy for a violation of the state disclosure provision. Nor are we aware of any such federal satutory provision. Without such a provision, we see no basis for holding that federal law requires suppression here simply because the Pennsylvania courts might have required suppression in a state prosecution. Accordingly, we hold that federal law does not require suppression of the evidence that, according to the defendants, was unlawfully disclosed.

B. We therefore turn to the question whether Pennsylvania law of its own force requires suppression in this case. It clearly does not. "It is a general rule that federal district courts will decide evidence questions in federal criminal cases on the basis of federal, rather than state, law." *United States v. Rickus*, 737 F.2d 360, 363 (3d Cir. 1984); *see also, e.g., United States v. Stiver*, 9 F.3d 298 (3d Cir. 1993), *cert. denied*, 510 U.S. 1136 (1994); *United States v. Shaffer*, 520 F.2d 1369, 1372 (3d Cir. 1975), *cert. denied sub nom., Vespe v. United States*, 423 U.S. 1051 (1976); *United States v. Armocida*, 515 F.2d 49, 52 (3d Cir.), *cert. denied*, 423 U.S. 858 (1975). Moreover, the relevant state statutory provision, 18 Pa. Cons. Stat. Ann. § 5721(a), does not purport to govern federal cases. It provides that a motion to suppress may be made "in any trial, hearing, or other adversary proceeding in or before any *court* or other authority *of this Commonwealth*." 18 Pa. Cons. Stat. Ann. § 5721(a) (emphasis added).

For these reasons, assuming for the sake of argument that evidence was disclosed in violation of state law, we hold that the district court did not err in refusing to suppress that evidence.[13]

VII.

The defendants next argue that the electronically intercepted

13. The government makes two additional arguments in support of its position on this issue. It argues that the disclosed communications were relevant to the state offenses listed in the interception order and that the state judge implicitly authorized disclosure to federal authorities by granting an extension of the interception order and granting an order authorizing postponement of service of inventory. Because we conclude that suppression is not an available remedy for unlawful disclosure, we do not reach these arguments.

oral evidence from the Fifth Avenue premises should have been suppressed because the affidavit did not indicate that normal investigative procedures would be inadequate, as required by 18 U.S.C. § 2518(3)(c). The defendants maintain that the confidential informant could have been further utilized in lieu of electronic surveillance. As we have stated, the affidavit submitted with the oral surveillance application was the same as that submitted with the video surveillance application, the sufficiency of which has already been discussed. *See supra* Part II(B). Accordingly, we will not address this argument again at this point. We note only that the informant had ceased working for the organization approximately six years before the affidavit was prepared, and therefore the probability of his continued effectiveness as an informant was low.

VIII.

Defendants additionally challenge the affidavit in support of the extension of the oral interception order for the Fifth Avenue premises, arguing that there was no basis to conclude that continuing the interception would produce any additional information. Extensions require the same showing as an initial application. 18 U.S.C. § 2518(5). Thus, the same determinations as to probable cause and the inadequacy of other investigative procedures must be made. *Id.* § 2518(3).

The affidavit submitted in support of the extension request stated that continued interception was needed because successful interception of conversations had been limited due to background radio noise. A. 131. The affidavit also stated that it was believed that the defendants were playing the radio for the purpose of thwarting the attempt by police to listen to conversations. *Id.* However, the affidavit added that those conversations that were

audible indicated that defendants were involved in an illegal gambling operation. *Id.* The affidavit further stated that one of the participants in the operation, Louis Esposito, whose telephones had previously been wiretapped, was approached by police in an attempt to gain his cooperation in investigating defendants. A. 140. Shortly after the interview, the affidavit revealed, Esposito informed Adolph Williams of the interview and told him that the police were investigating the operation. Finally, the affidavit stated that the police had attempted further physical surveillance of the Fifth Avenue premises but that surveillance teams had reported that many of the targets were using evasive tactics, such as circling the block, switching lanes, and running red lights after waiting for the green light to turn red, in order to prevent anyone from following them through the intersection. A. 145. The affidavit indicated that investigators were in the process of determining whether a mobile tracking device would assist in the surveillance of key targets and that the investigators were also exploring the feasibility of aerial surveillance. A. 145- 46.[14] Based on these representations, we

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14. The affidavit states:

> Your affiants believe that while there has been progress throughout the course of this interception, that a further period of interception will be required to identify the relationships and responsibilities of the parties already identified and to identify other participants in this organization. As previously stated, this investigation is unusual in that many of the subordinate parties had not been previously identified as to identity and also as to activity. Due to the short and abrupt nature of the majority of the conversations intercepted to date, further interceptions are necessary to be able to establish beyond a reasonable doubt, the sources of the cash which is flowing through this building. Because of the nature of the conversations, much of the evidence will be of a circumstantial

(Cont'd)

believe the government made an adequate showing of probable cause and lack of alternative investigative means to justify the extension of the surveillance order. We therefore hold that the district court's denial of defendants' motion to suppress evidence obtained during the extension was proper.

IX.

Finally, the defendants argue that the electronically intercepted oral evidence from the Fifth Avenue premises should have been suppressed because the tapes were not sealed in accordance with federal and state law. The interception ended on Friday, August 9, 1991, but the tapes were not sealed until Monday, August 12, 1991. The district court found that the tapes were sealed as soon as practical after the intervening weekend and denied the motion to suppress.

Federal and Pennsylvania law require the sealing of recordings "[i]mmediately" upon the expiration of the surveillance order or any extensions of such order. *See* 18 U.S.C. § 2518(8)(a); 18 Pa. Cons. Stat. Ann. § 5714(b). Section 2518(8)(a) contains "an explicit exclusionary remedy for noncompliance with the sealing requirement." *United States v. Ojeda Rios*, 495 U.S. 257, 263 (1990). If the tapes are not

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(Cont'd)

> nature. This is especially true because of the documented efforts of these individuals to avoid detection by: evasive tactics, including their driving patterns; playing of loud music within the area of interception, and shredding of physical evidence such as those papers believed to contain documentation as to the amount of money which flows through this organization.

A. 148-49.

immediately sealed upon expiration of the order, the government must not only explain why a delay occurred but must also explain why the delay was excusable. *Id.* at 264-65. The term "[i]mmediately" means that the tapes should be sealed eiter as soon as practical after the surveillance ends or as soon as practical after the final extension order expires. *United States v. Vastola,* 915 F.2d 865, 875 (3d Cir. 1990), *cert. denied,* 498 U.S. 1120 (1991). If the tapes were sealed as soon as practical, our inquiry ends, and the order denying the motion to suppress must be affirmed. *United States v. Carson,* 969 F.2d 1480, 1491 (3d Cir. 1992). If the tapes were not sealed promptly enough, we must ask whether the government provided an objectively reasonable explanation for the delay. *Id.*

In *Carson,* 969 F.2d at 1488, we held that the sealing of certain recordings was immediate within the meaning of the statute where the surveillance was completed at the end of one week and tapes were sealed at the beginning of the next week. One order expired on Wednesday, May 12, 1982, and the tapes were sealed on Monday, May 17, 1982. We held that "[w]hen the intervening weekend is considered, there is no indication in the record that the tapes were not sealed as soon as was practical," and we therefore held that those tapes were sealed "immediately." *Id.* at 1498. A second order expired on Thursday, December 16, 1982, and the tapes were sealed on Wednesday, December 22, 1982. We held that since the gap included an intervening weekend, those tapes were also sealed "immediately." We accordingly did not reach the issue of whether the government's delay was excusable with respect to either order.

Here, the government learned that the issuing judge, for whom a progress report had been prepared for the purpose of sealing the tapes, was out of town and would be unavailable to

seal the tapes on Friday, August 9, 1991, the day the extension would expire. Therefore, on Wednesday, August 7, a request was made for a substitute judge to be appointed, and Judge Kate Ford Elliot was assigned to the case. On Thursday, August 8, the assistant district attorney spoke with Judge Elliot and requested to seal the tapes on Saturday, August 10. Judge Ellot told him that Monday, August 12 would be adequate to seal the tapes, and on Monday, August 12, the tapes were sealed.

We conclude that the tapes were sealed "immediately" for the purpose of the statutory sealing requirement. Under the holding of Carson, where the surveillance ends on Friday and the tapes are sealed on the following Monday, the sealing is immediate in light of the intervening weekend. Furthermore, even if the Monday sealing were not deemed to be immediate, the assistant district attorney's reliance on the judge's decision to wait until Monday was certainly reasonable, and consequently the delay was excusable. The assistant district attorney had previously arranged for a substitute judge in order to comply with § 2518(8)(a) and had deferred to that judge's decision to seal the tapes the following Monday. We believe it would be unreasonable to expect the attorney to seek out a third judge to seal the tapes after Judge Elliot had told him that waiting until Monday would be sufficient.

X.

For the reasons explained above, we affirm the judgments against the defendants.

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Third Circuit

APPENDIX B — EXCERPTED TRANSCRIPT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA DATED SEPTEMBER 18, 1995

* * *

[3] Joanne Williams' motion to adopt co-defendants' motion and briefs, and that's granted.

Defendant DePofi's motion to join the co-defendants motions, and that's granted.

Defendant Salvatore A. Williams' motion to join in the motions filed by the other defendants, and that's granted.

Defendant Salvatore C. Williams' and Adolph Williams' motion to join. That's granted.

All right. Now we get into more of the substantive, and the first is defendant Eugene Williams' motion for a bill of particulars. In the motion, that's dealt with in the motion in a certain order, and we're going to deal with it in that same order.

Diane, are these numbers, do these have any correspondence to the motion?

(Discussion off the record between the Court and Law Clerk.)

THE COURT: First deal with the motion for bill of particulars in relation to Count 1.

MR. JOHNSON: This is for Eugene Williams, Your Honor?

THE COURT: Yes, this is Eugene. Yes.

Appendix B

THE COURT: As to Count 1, it is denied. As to Count 3, is denied.

* * *

[10] . . . appropriate if it be made part of the record, and I've marked it, because it's not part of the record otherwise, and I have Defendant's Exhibits 1 and 2, which are copies of the last page, indicating — and this was represented to by counsel for the government, Mr. Teitelbaum has this, that these affidavits which are signed, represented to be signed on June 26th, as opposed to June 27th.

In light of that, we withdraw our argument based on Defendant's Exhibits 1 and 2.

THE COURT: Okay.

MR. JOHNSON: I'd like to make them part of the record so there is a record of —

THE COURT: Sure.

MR. JOHNSON: — the fact that they have been presented.

THE COURT: It's been represented to the Court that the government has provided affidavits to the defendants which indicate that the affidavits that were used to obtain the permission were signed on June 26th.

MR. JOHNSON: We received those Monday or Tuesday, September 12th. Mr. Teitelbaum so informed me they were unsealed and in his possession last Friday.

THE COURT: Okay.

The second basis was that the use of the visual surveillance was conducted in violation of the right of [11] privacy guaranteed by the Fourth Amendment. There were no cases provided by the defendants that indicated that that, that video surveillance, per se, is a violation of the Fourth Amendment rights. The law presented that we have reviewed indicates that you must look at the circumstances, and you have to, you have to determine under all the circumstances. In the case cited, United States vs. Torrez, stands for that. This was a business building, as understand it, where the video surveillance went on not a residence; is that right?

MR. JOHNSON: I don't know if I'd want to stipulate to that, Your Honor. If that's the representation of the government, I don't — they can rely on the state of the record that they have established.

THE COURT: Okay. That's my understanding. Because I think that's one circumstance that would have to be taken into consideration.

MR. TEITELBAUM: Yes, sir. I think the affidavits, which I don't think that anybody was challenging the authenticity of to the Title 3, do specify that it was an office structure and it was not a residence. I think the Court — there is something on the record that the Court could rely on.

THE COURT: That's where I got that understanding.

[12] MR. JOHNSON: I don't argue they say that; I just don't want to be in a position to acquiesce necessarily in their representation.

THE COURT: But you don't have any contrary evidence to present?

MR. JOHNSON: Other than in the Torrez case. They went further, Your Honor, because I think they considered a reasonableness test, and that may be what you're directing your attention to.

THE COURT: Yes. That's considering all the circumstances.

MR. JOHNSON: But they did, and I think it's interesting, Torrez involved the manufacturing of bombs. They used only videos, they did not use bugs or wiretaps, and the Court said, might be much different if we dealt with a chop-shop or gambling parlor.

In addition to that argument, which is the reasonableness test of Torrez, there's also four items with regard to the particularity requirement, one of which is need for interception, and I don't think under the circumstances —

THE COURT: Well, we have read the information that was provided to the Court at the time they authorized it and determined that they have met those requirements.

MR. JOHNSON: Well, then, the Court's ruling is . . .

[13] THE COURT: Therefore, the motion to suppress on that basis is denied.

Now we get to the next one, which I think is probably the most important one, and that's, that's the Court order authorizing the authorization.

Mr. Teitelbaum, you read that Court order. There's not much doubt to it. Now, you seem to be arguing that that's not what the Court meant, and that might very all be true, but we have to look at the Court order, not what the Court might have meant.

First of all, we all know that the order was probably prepared by the District Attorney and not by the Court at all. But that's the order that the Judge signed. You can't help, you can't help in reading that order determine that there were three options that would terminate the authorization to intercept; one being when enough information had been revealed, and I don't really think that's at issue here, the second being 30 days from the day the interception began, and the third, or ten days after the order is entered, whichever is earlier.

It appears to me clearly that the authorization and the 10 days after ended ten days after the order was issued, and any interception after that time was outside the permission given by the Court and should be suppressed.

* * *

[39] MR. JOHNSON: There cases are in the brief involving the search of 274 Foxcroft, but there's another one here, U.S. vs. Weber, that may be helpful; Kow and Weber. Weber is 923 F.2d, 1338, 1990 case.

THE COURT: Okay. We're going to take a recess, and I hope it isn't too long, but we're going to look at this.

(Court recessed at 11:30 o'clock a.m.)

* * *

(Court reconvened at 12:12 o'clock p.m.).

THE COURT: Where there is a facially invalid order and the law enforcement officers acted reasonably and complied with the core statutory requirements, the United States vs. Leon requires that suppression be denied. But here we have a facially valid order.

Police officers cannot be objectively reasonable and error free if they violate that order. United States vs. Moore, 41 F.2d, 370, Eighth Circuit case, 1994.

Therefore, the motion to suppress is granted as to those interceptions that took place after the ten-day period.

Now, we have a, a renewal — an extension order that was signed by the Judge at a later date which I believe used the same language.

MR. TEITELBAUM: Your Honor, if I may, I think [40] the — just in all honesty to the Court, we would not be able to argue that the basis of the second affidavit, the extension affidavit, was not predicated on conversations which were intercepted during that period subsequent to the ten days, meaning day 21 through 30. So, my guess would be that if the Court is ordering suppression of the conversations, then there is no good — and there is no good faith, I would presume that that meant those conversations couldn't form the basis for the extension application.

THE COURT: If those — yeah. I didn't know what the basis for the extension was, but if that was the basis the extension, I would agree.

MR. TEITELBAUM: So, I think de facto, by suppressing days 11 through 30, automatically suppresses the second one.

THE COURT: All right.

MR. JOHNSON: Yes.

THE COURT: We have — I think that was No. 3 of that motion.

MR. JOHNSON: It was, Your Honor.

THE COURT: 4 is denied. 5 is denied. 6 is denied. 7 is denied. 8 is denied. 9 is denied.

MR. JOHNSON: Which was 9, Your honor?

THE COURT: 9 was —

* * *

[42] DIANE HOPPER, Law Clerk: Not yet.

THE COURT: We haven't gotten to that yet. We haven't gotten to that.

Next we have defendant Salvatore A. Williams' motion to suppress for failure of the application to conform with Title 18 of the Pennsylvania statutes, various actions, and also Title 18 of the United States Code.

That's denied.

MR. ANTKOWIAK: Judge, that motion, in all fairness, should be withdrawn. The reason for that is the, the order that I had upon which I wrote this extended motion, to my own chagrin, unfortunately, was a miscopied and misidentified document; was kind of hybrid. I discussed that with Miss Eddy, and that should be withdrawn.

The other part of it related to the initial interception. That also is rendered moot by the representation of the government that there was no other information. So in all respects that, I would ask that that particular motion be withdrawn.

THE COURT: All right. That's withdrawn.

Then we have defendant Salvatore A. Williams' motion to suppress, for failure of the application for the interception or for communications to confirm with 18 USC, 2518. That's denied. The application does conform.

[43] We have next defendant Salvators Williams' motion suppress for failure — Salvatore A. Williams', for failure of a Commonwealth to comply with the Pennsylvania Statute 18, Section 5718, Document No. 44. That's denied.

And then there's defendant Salvatore A. Williams' motion to suppress on the basis of the disclosure of evidence as interceptions were made to the Internal Revenue Service. That's denied.

There's the motion of Salvatore A. Williams to suppress tapes of wire and oral communications for failure of the Commonwealth to comply with the Pennsylvania statutes, Section 5714(b) and the federal statute, Section 2518(a)(8). That's denied.

Appendix B

The delay in sealing the tape due to an intervening weekend, Judge Ford-Elllott's direction of the sealing of the tapes could be done on August 12th, 1991, indicates that the tapes were sealed as soon as practicable.

Defendant Salvatore A. Williams' motion to dismiss indictment and/or suppress tape recordings for violation of 18 Pennsylvania Code, 5717(a). That's denied.

The defendant Salvatore A. Williams request for notice pursuant to Rule 404(b). Government states it has no intention to offer any other crimes evidence as to this defendant. To the extent that defendant seeks a ruling on [ ] whether the government may impeach the defendant with evidence of prior convictions, we'll reserve decision on at issue until, until trial.

Defendant Salvatore A. Williams' request for notice pursuant to Rule 12(d) of the Federal Rules of Criminal procedure. That's granted.

Defendant Salvatore C. Williams' and Adolph Williams' motion to suppress video surveillance, oral interceptions and physical searches, and direct and indirect use thereof. That's document No. 31.

MR. JOHNSON: That may become a little more involved now in light of the Court's initial ruling, Judge, so it's probably something we'll have to work out with the government. I don't know, because they are in position to now what the fruits would have been.

Anything, I believe, after July 5th on the, on the bug and video would be excluded under the Court's ruling. So, I guess we'll have to group a little bit on that.

MR. TEITELBAUM: Can I just ask Mr. Johnson to explain that to me?

THE COURT: Sure. Go ahead.

(Discussion off the record between counsel.)

MR. TEITELBAUM: I think Mr. Johnson is correct, Your Honor. There is a conversation in — sort of integral to the search warrant that came on July 9th, so did they . . .

* * *

APPENDIX C — FOURTH AMENDMENT OF THE UNITED STATES

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX D — 18 U.S.C. SECTIONS 2516 AND 2518

18 U.S.C. SECTION 2516

Title 18, United States Code, Section 2516. Authorization for interception of wire, oral, or electronic communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of —

(a) any offense punishable by death or by imprisonment for more than one year under sections 2274 through 2277 of title 42 of the United States Code (relating to the enforcement of the Atomic Energy Act of 1954), section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel), or under the following chapters of this title: chapter 37 (relating to espionage), chapter 105 (relating to sabotage), chapter 115 (relating to treason), chapter 102 (relating to riots) chapter 85 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy);

(b) a violation of section 186 or section 501(c) of

title 29, United States Code (dealing with restrictions on payments and loans to labor organizations), or any offense which involves murder, kidnapping, robbery, or extortion, and which is punishable under this title;

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 215 (relating to bribery of bank officials), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1032 (relating to concealment of assets), section 1084 (transmission of wagering information), section 751 (relating to escape), section 1014 (relating to loans and credit applications generally; renewals and discounts), section 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnapping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1958 (relating to use of interstate commerce facilities in the commission of murder for hire), section 1959 (relating to violent crimes in aid of racketeering activity), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 1956 (laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified

unlawful activity), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 1344 (relating to bank fraud), sections 2251 and 2252 (sexual exploitation of children), sections 2312, 2313, 2314, and 2315 (interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(8) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities), section 1963 (violations with respect to racketeer influenced and corrupt organizations), section 115 (relating to threatening or retaliating against a Federal official), and section 1341 (relating to mail fraud), section 351 (violations) with respect to congressional, Cabinet, or Supreme Court assassinations, kidnapping, and assault), section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), section 175 (relating to biological weapons), or section 1992 (relating to wrecking trains);

(d) any offense involving counterfeiting punishable under section 471, 472,or 473 of this title;

(e) any offense involving fraud connected with a case under title 11 or the manufacturer, importation, receiving, concealment, buying, selling, or otherwise

dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5822 of title 31, United States Code (dealing with the reporting of currency transactions);

(h) any felony violations of section 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

(i) any felony violation of chapter 71 (relating to obscenity) of this title;

(j) any violation of section 60123(b) (relating to destruction of a natural gas pipeline) or 46502 (relating to aircraft piracy) of title 49;

(k) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act);

(*l*) the location of any fugitive from justice from an offense described in this section; or

(m) any felony violation of sections 922 and 924 of title 18. United States Code (relating to firearms);

(n) any violation of section 5861 of the Internal Revenue Code of 1986 (relating to firearms); and

(o) any conspiracy to commit any offense described in any subparagraph of this paragraph.

(2) The principal prosecuting attorney of any State, or the principal prosecuting attorney of any political subdivision thereof, if such attorney is authorized by a statute of that State to make application to a State court judge of competent jurisdiction for an order authorizing or approving the interception of wire, oral, or electronic communications, may apply to such judge for, and such judge may grant in conformity with section 2518 of this chapter and with the applicable State statute an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, gambling, robbery, bribery, extortion, or dealing in narcotic drugs, marihuana or other dangerous drugs, or other crime dangerous to life, limb, or property, and punishable by imprisonment for more than one year, designated in any applicable State statute authorizing such interception, or any conspiracy to commit any of the foregoing offenses.

(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by

an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.

18 U.S.C. SECTION 2518

Title 18, United States Code, Section 2518. Procedure for interception of wire, oral, or electronic communications

(1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

> (a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;
>
> (b) a full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued, including (i) details as to the particular offense that has been, is being, or is about to be committed, (ii) except as provided in subsection (11), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each such application; and

(f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizaing or approving interception of wire, oral, or electronic communications within the territorial jurisdiction of the court in which the judge is sitting (and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction), if the judge determines on the basis of the facts submitted by the applicant that —

> (a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense enumerated in section 2516 of this chapter;
>
> (b) there is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
>
> (c) normal investigative procedure have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;
>
> (d) except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter shall specify —

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(a) the identity of the person, if known, whose communications are to be intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications and of the person authorizing the application; and

(e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

An order authorizing the interception of a wire, oral, or electronic communication under this chapter shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor

by the applicant for reasonable expenses incurred in providing such facilities or assistance. Pursuant to section 2522 of this chapter, an order may also be issued to enforce the assistance capability and capacity requirements under the Communications Assistance for Law Enforcement Act.

(5) No order entered under this section may authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (1) of this section and the court making the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the

supervision of an investigative or law enforcement officer authorized to conduct the interception.

(6) Whenever an order authorizing interception is entered pursuant to this chapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that —

(a) an emergency situation exists that involves —

(i) immediate danger of death or serious physical injury to any person,

(ii) conspiratorial activities threatening the national security interest, or

(iii) conspiratorial activities characteristic of organized crime.

that requires a wire, oral, or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsections (1) and (2)

of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517.

(b) Applications made and orders grated under this chapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2518(7)(b) which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine in his discretion that is in the interest of justice, an inventory which shall include notice of —

(1) the fact of the entry of the order or the application;

(2) the date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, may in his discretion make available to such person or his counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction the serving of the inventory required by this subsection may be postponed.

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that —

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(b) in addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion to suppress made under paragraph (a) of this subsection, or the denial of an application for an order of approval, if the United States attorney shall certify to the judge or other official granting such motion or denying such application that the appeal is not taken for purposes of delay. Such appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted.

(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.

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(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if —

(a) in the case of an application with respect to the interception of an oral communication —

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

(iii) the judge finds that such specification is not practical; and

(b) in the case of an application with respect to a wire or electric communication —

(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, and Assistant Attorney General, or an acting Assistant Attorney General;

(ii) the application identifies the person believed to be committing the offense and whose

communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that such purpose has been adequately shown.

(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (8)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

APPENDIX E — PROVISIONS OF THE PENNSYLVANIA WIRETAP STATUTE, 18, PA. C. S. SECTION, 5712

18 PA. C.S. SECTION 5712

Title 18, PA. C.S. § 5712. Issuance of order and effect.

(a) Authorizing orders — Each order authorizing the interception of any wire, electronic or oral communication shall state the following:

(1) The identity of the investigative or law enforcement officers or agency to whom the authority to intercept wire, electronic or oral communications is given and the name and official identity of the person who made the application.

(2) The identity of, or a particular description of, the person, if known, whose communications are to be intercepted.

(3) The character and location of the particular communication facilities as to which, or the particular place of the communication as to which, authority to intercept is granted.

(4) A particular description of the type of the communication to be intercepted and a statement of the particular offense to which it relates.

(5) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

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(b) Time limits — No order entered under this section shall authorize the interception of any wire, electronic or oral communication for a period of time in excess of that necessary under the circumstances. Every order entered under this section shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception under this chapter by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said order. In the event the intercepted communication is in a code or foreign language and an expert in that code or foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. No order entered under this section shall authorize the interception of wire, electronic or oral communications for any period exceeding 30 days. This 30-day period begins on the day on which the investigative or law enforcement officers or agency first begins to conduct an interception under the order, or ten days after the order is entered, whichever is earlier. Extensions or renewals of such an order may be granted for additional periods of not more than 30 days each. No extension or renewal shall be granted unless an application for it is made in accordance with this section, and the judge makes the findings required by section 5710 (relating to grounds for entry of order).

(c) Responsibility — The order shall require the Attorney General or the district attorney, or their designees, to be responsible for the supervision of the interception.

(d) Progress reports — Whenever an order authorizing an interception is entered, the order may require reports to be made to the judge who issued the order showing what progress has

been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at such intervals as the judge may require.

(e) Final report — Whenever an interception is authorized pursuant to this section, a complete written list of names of participants and evidence of offenses discovered, including those not stated in the application for order, shall be filed with the court at the time the authorized interception is terminated.

(f) Assistance — An order authorizing the interception of a wire, electronic or oral communication shall, upon request of the applicant, direct that a provider of electronic communication service shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider is affording the person whose communications are to be intercepted. The obligation of a provider of electronic communication service under such an order may include but is not limited to conducting an in-progress trace during an interception. Any provider of electronic communication service furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing the facilities or assistance. The service provider shall be immune from civil and criminal liability for any assistance rendered to the applicant pursuant to this section.

(g) Entry by law enforcement officers — An order authorizing the interception of a wire, electronic or oral communication shall, if requested, authorize the entry of premises or facilities specified in subsection (a)(3), or premises necessary to obtain access to the premises or facilities specified

in subsection (a)(3), by the law enforcement officers specified in subsection (a)(1), as often as necessary solely for the purposes of installing, maintaining or removing an electronic, mechanical or other device or devices provided that such entry is reasonably necessary to accomplish the purposes of this chapter and provided that the judge who issues the order shall be notified of the time and method of each such entry prior to entry if practical and, in any case, within 48 hours of entry.

As amended 1988, Oct. 21, P.L. 1000, No. 116, § 5, imd. effective.